No. 97-323 (2)

Supreme Court, U.S.
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In The

Supreme Court of The United States

October Term, 1997

TED LAPIDUS, S.A.,

Petitioner,

- against -

AVROM R. VANN, ESQUIRE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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8 pp

TABLE OF CONTENTS

Page

Statement of the Case 1

Argument 3

TABLE OF AUTHORITIES

CASES

Arizonans for Official English v. Arizona, 520, U.S. ___, 117 S.Ct. 1055, 137, L.Ed.2d 170 (1997) 5

Board of license Commissioners of Tiverton v. Pastore, 469 U.S. 238 (1985) 5

Diamond v. Charles, 476 U.S. 54 (1986) 3

Preiser v. Newkirk, 422 U.S. 395 (1975) 3

28 U.S.C. Section 1927 . . . . . Passim

UNITED STATES SUPREME COURT

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TED LAPIDUS, S.A.,

Petitioner

Docket No. 97-323

v.

AVROM R. VANN, ESQUIRE, ET. AL.,

Respondents.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, AVROM R. VANN, ESQUIRE ("Vann") respectfully requests this Court to deny the Petition for a Writ of Certiorari inasmuch as the issue for which the Writ of Certiorari is sought has become moot and therefore Petitioner, TED LAPIDUS, S.A. ("Ted Lapidus") lacks standing to proceed before this Court.

STATEMENT OF THE CASE

The United States Court of Appeals for the Second Circuit vacated a judgment which has been entered against

Vann in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. Section 1927 on the grounds that the District Court denied Vann due process and remanded the matter to the District Court for further proceedings consistent with the Decision and Order of the United States Court of Appeals.

Thereafter, the United States District Court, by an Order to Show Cause sua sponte, issued by the Court, directed Vann to show cause why he should not be sanctioned under 28 U.S.C. Section 1927. A plenary hearing was held before the United States District Court on July 10, 1997. Counsel for Ted Lapidus was present and fully participated in said hearing, sought leave of the United States District Court to file a supplemental Memorandum of Law in further support the granting of sanctions against Vann, and thereafter, filed a Memorandum in support of the imposition of Sanctions against Avrom R. Vann, Esquire under 28 U.S.C. Section 1927 and a further declaration

dated August 7, 1997 of Bruce L. Adams, Esquire. At no time did Ted Lapidus seek a stay of further proceedings in the United States District Court nor did Ted Lapidus at any time advise the United States District Court that it would be asking this Court for a Writ of Certiorari.

ARGUMENT

To qualify as a case fit for Federal-Court adjudication, an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. See Preiser v. Newkirk, 422 U.S. 395, 401 (1975). Article III of the Constitution confines Federal Courts to the decision of cases or controversies. Standing on appeal is dependent upon the litigant possessing a direct stake in the outcome of the appeal. Diamond v. Charles, 476 U.S. 54, 62 (1986).

In the instant case, because the United States District Court for the Southern District of New York conducted a full plenary hearing on the remand, Appellate review no

longer involves an actual case or controversy. Ted Lapidus no longer has a direct stake in the outcome of an appeal to this Court. Had Ted Lapidus wished to preserve its right to a Writ of Certiorari, it was incumbent upon it to advise the District Court of the fact that it would be seeking Certiorari and it was equally incumbent upon Ted Lapidus to seek a stay of further proceedings in the District Court pending the determination of this Court. Having not done so, the issues on appeal have become moot and Ted Lapidus is now precluded from seeking Appellate review before this Court.

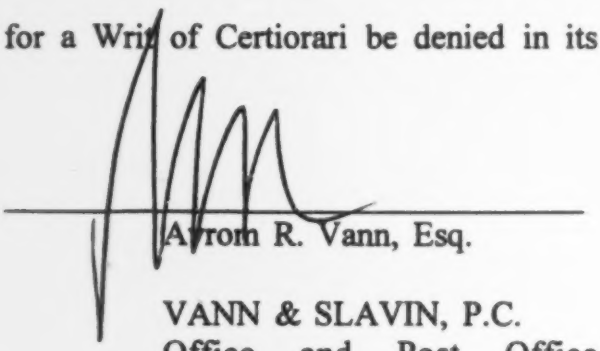
One may only infer from the fact that Ted Lapidus filed its request for a Writ of Certiorari to this Court weeks after the conclusion of the full plenary hearing in the District Court that Ted Lapidus has concluded that the District Court does not intend to award sanctions against Vann. If Ted Lapidus was confident that the District Court intended to grant sanctions against Vann, why would Ted Lapidus seek to have this Court grant a Writ of Certiorari

from the determination of the United States Court of Appeals for the Second Circuit?

Indeed, Ted Lapidus' Petition for a Writ of Certiorari to this Court is derelict in that Ted Lapidus did not advise this Court of the fact that the District Court held a full plenary hearing upon remand. It is the duty of counsel to bring to the Federal Tribunal's attention without delay facts that may raise a question of mootness. Arizonans For Official English v. Arizona, 520. U.S. _____, 117 S.Ct. 1055, 137 L.Ed.2d. 170 (1997); Board of License Commissioners of Tiverton v. Pastore, 469 U.S. 238, 240 (1985).

Ted Lapidus' request for a Writ of Certiorari to this Court after fully participating in the plenary hearing upon remand to the District Court bears close inspection.

For the foregoing reasons, Vann respectfully requests that the Petition for a Writ of Certiorari be denied in its entirety.



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